

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WILDEARTH GUARDIANS,)	
)	
Plaintiff,)	
)	No. CIV _____
vs.)	
)	
UNITED STATES FISH AND WILDLIFE)	
SERVICE,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. Preliminary Statement

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. §552 et seq., to compel the U.S. Fish and Wildlife Service (“FWS”), an agency of the U.S. Department of the Interior, to produce documents and records relating to the agency’s actions and operations in connection with Mexican wolves that reside on public lands in New Mexico. Specifically, this actions arises from the failure of the FWS to comply with the requirements of FOIA in connection with two FOIA requests that sought the production of documents and records concerning the permanent removal from the wild of the “alpha female” of the Fox Mountain pack of wolves.

2. Plaintiff WildEarth Guardians is a New Mexico not-for-profit corporation devoted to research and public education concerning the management of public lands, including the protection of wildlife on public lands and the recovery of threatened and endangered species.
3. For more than 15 years, WildEarth Guardians has had a specific interest in the conservation and recovery of imperilled Mexican wolves in the southwestern United States, including the federal government's actions in connection with the reintroduction of this species into the wild.
4. The two FOIA requests that are the subject of this action were specifically intended to prompt the release of information concerning Mexican wolf conservation. As detailed below, the FWS has never made a substantive response to either of the two FOIA requests that are the subject of this lawsuit.
5. The FWS's failure to provide substantive responses to WildEarth Guardians' two FOIA requests for documents and records constitutes a violation of the FOIA, and further constitutes constructive exhaustion of WildEarth Guardians' right to administratively appeal the FWS's violation of the mandatory requirements of FOIA. 5 U.S.C. §552(a)(6)(C)(i).
6. In this civil action, WildEarth Guardians seeks a court order declaring that the FWS's failure to provide a substantive response to WildEarth Guardians' requests for documents and records violates the FOIA and ordering the FWS to produce the requested documents and records. 5 U.S.C. §552(a)(4)(B).

II. Jurisdiction and Venue

7. This Court has jurisdiction over this action under 5 U.S.C. §522(a)(4)(B) (FOIA), 28 U.S.C. §1331 (federal question), and 28 U.S.C. §1361 (mandamus).
8. Venue in this Court is proper under 5 U.S.C. §522(a)(4)(B) (FOIA), because Plaintiff WildEarth Guardians is a New Mexico not-for-profit corporation with its principal place of business in New Mexico.

III. Parties

9. WildEarth Guardians is a not-for-profit conservation organization with its primary place of business in Santa Fe, New Mexico. WildEarth Guardians has approximately 4,500 members throughout the United States. WildEarth Guardians is dedicated to protecting and restoring wildlife, wild rivers, and wild places in the United States, and to safeguarding habitats relied upon by threatened and endangered species. In part, WildEarth Guardians works in furtherance of its goals by acquiring information regarding federal programs and activities through the federal Freedom of Information Act. WildEarth Guardians then compiles and analyzes that information and, subsequently, disseminates that information to its membership, the general public, and public officials through publications, reports, its website and newsletter, general news media coverage, and public presentations. WildEarth Guardians' successful efforts at educating the public on issues concerning federal government program and activities that affect the environment contribute significantly to the public's understanding of governmental operations and activities. WildEarth Guardians also uses the information that it acquires through FOIA to participate in federal decision making processes, to file administrative appeals and civil actions, and generally to ensure that federal agencies comply with

federal environmental laws. WildEarth Guardians and its members are directly injured by the FWS's failure to comply with the statutory requirements of FOIA and a favorable outcome of this litigation will redress that injury. WildEarth Guardians bring this action on behalf of itself, its staff, and its members.

10. Defendant FWS has a mandatory statutory duty to respond to FOIA requests that are made to the agency, and this action arises from the FWS's failure to perform its statutory duties under the FOIA in connection with two FOIA requests.

IV. Facts

11. On August 8, 2012, the FWS issued a "kill order" for the Mexican wolf known as AF1188. This wolf – hereafter referred to as the "loba" – is the alpha female of the Fox Mountain pack. At the time that the "kill order" was issued, the loba was known to have a mate and five pups, including four young of the year and one yearling pup.
12. The FWS issued the August 8 "kill order" ostensibly because the loba and her pack had preyed on four cows on federal public lands in New Mexico.
13. The loba is one of only six breeding females in the total population of less than 60 Mexican wolves in the wild. Conservation and recovery of the species cannot occur unless successfully breeding females are allowed to live in the wild, and the removal of the loba imperils not only the continued existence of her pups but also the future of the federal government's Mexican wolf reintroduction program.
14. The FWS "kill order" with respect to the loba elicited an immediate and dramatic reaction from the public which registered hundreds of complaints with the FWS and New Mexico's congressional delegation regarding the "kill order." Accordingly, the FWS

rescinded the “kill order” two days after it was issued and instead ordered that the loba be removed from the wild and permanently housed in the Southwest Wolf Conservation Center.

15. On or about October 15, 2012, the loba was captured and removed from the wild. The separation of the loba from the pups that she continued to provision up until the time of her capture presents an immediate threat to the well-being and continued survival of those pups.
16. Ever since the “kill order” was issued, WildEarth Guardians has been making efforts to confirm that the loba was *in fact* responsible for the death of four cows that grazed on public lands. In connection with this effort, WildEarth Guardians submitted various FOIA requests to the FWS and to the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (“APHIS”). (APHIS is the agency that was responsible for documenting the supposed loss of cattle to the loba and for the eventual capture and removal of the wolf.)
17. Based on preliminary documents that have been received from APHIS including necropsy reports, it appears that there is no factual basis for the claim that the loba was responsible for the death of any cattle.
18. To the extent that there is any information at all that links the loba to the death of cattle, that information would be in the possession of the FWS which issued the “kill order” and which subsequently converted the “kill order” into an order for permanent removal.
19. The two FOIA requests that are the subject of this FOIA lawsuit are specifically intended to secure the production of the information – if any such information exists – which

would link the loba with the predation of cattle and which would justify the loba's permanent removal from the wild.

FOIA Request No. 2012-01199

20. On August 13, 2012, WildEarth Guardians submitted a FOIA request to the FWS seeking six categories of records concerning the FWS's observations and records regarding the Fox Mountain pack. The FOIA request specifically sought information that would link any wolves in the pack to the predation of cattle on New Mexico public lands and information that would justify the FWS's "kill order" and subsequent order for permanent removal.
21. On September 28, 2012, the FWS acknowledged in an e-mail to WildEarth Guardians that the FWS's response to the FOIA request was overdue. In that e-mail, the FWS stated that it expected to produce a partial response to the FOIA by the end of October.
22. By the end of October, the FWS had not responded to the FOIA request.
23. In an e-mail exchange of November 1, 2012, the FWS committed to send a response to the request "next week."
24. By November 8, 2012, the FWS had still not produced any documents in response to the FOIA request. Accordingly, WildEarth Guardians e-mailed the FWS and indicated that it would commence litigation unless it received a full response to the FOIA request by November 12, 2012.
25. On November 13, 2012, the FWS responded that it was still reviewing relevant documents.

26. The FWS has not stated that there are any unusual or exceptional circumstances that would justify a failure to comply with the twenty day response deadline under the FOIA. Nonetheless, in an effort to cooperate with the FWS and to facilitate a prompt production of the most relevant documents, WildEarth Guardians agreed to the FWS's various requests for extensions of time to comply with its mandatory obligations under the FOIA.
27. To this date, the FWS has not produced a single document or record in response to the FOIA request.

FOIA Request No. 2013-00014

28. On September 21, 2012, WildEarth Guardians submitted a FOIA request to the FWS seeking three categories of records concerning the management of Mexican wolves in the wild.
29. In a subsequent telephone conversation, WildEarth Guardians agreed to the FWS's request to narrow the scope of the request in order to facilitate a prompt response from the FWS.
30. In correspondence of November 1, 2012, the FWS indicated that it had not yet produced any documents or records in response to this request.
31. On November 13, 2012, the FWS responded that it would be "a few more weeks" until the records were compiled.
32. The FWS has not stated that there are any unusual or exceptional circumstances that would justify a failure to comply with the twenty day response deadline under the FOIA.
33. To this date, the FWS has not produced a single document or record in response to the FOIA request.

34. Except in circumstances that are not relevant in this case, the FOIA requires federal agencies to “determine within 20 days . . . after the receipt of any [FOIA] request whether to comply with such request and . . . immediately notify the person making such request of such determination and the reasons therefor.” 5 U.S.C. §552(a)(6)(A)(I).
35. The FWS’s failure to produce the documents and records requested by WildEarth Guardians in the two FOIA requests identified in this complaint within the mandatory twenty day period established by FOIA has frustrated and continues to frustrate WildEarth Guardians’ pursuit of its objective to educate its members, the public, and decision makers as to the environmental effects of federal government programs and activities.

V. Cause of Action

36. WildEarth Guardians incorporates the preceding paragraphs by reference as if fully set out herein.
37. The FWS has violated FOIA by failing to provide a substantive response to WildEarth Guardians’ requests for documents and records within twenty days of receipt.
38. The FWS continues to violate FOIA by failing to respond to WildEarth Guardians’ requests for documents and records.

VI. Request for Relief

WHEREFORE, WildEarth Guardians request that this Court:

39. Declare unlawful the FWS’s failure to respond to WildEarth Guardians’ requests for documents and records within twenty days of receipt. 5 U.S.C. §552(a)(4)(B).

40. Order the FWS to produce immediately the documents and records requested by WildEarth Guardians. 5 U.S.C. §552(a)(4)(B).
41. Award WildEarth Guardians its reasonable attorney fees and costs incurred in prosecuting this civil action. 5 U.S.C. §552(a)(4)(E).
42. Grant such other and further relief as the Court deems just and proper.

Dated: November 14, 2012

Respectfully submitted,

/s/ Steven Sugarman

Steven Sugarman
347 County Road 55A
Cerrillos, New Mexico 87010
(505) 672-5082

Attorney for Plaintiff WildEarth Guardians